

s STATE OF MICHIGAN
COURT OF APPEALS

NADIA SELLERS,

Plaintiff-Appellee,

v

ANDRE SMITH,

Defendant-Appellant.

UNPUBLISHED

July 31, 2007

No. 275592

Ingham Circuit Court

LC No. 05-002986-DS

Before: Murphy, P.J., and Talbot and Servitto, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's denial of his motion to modify child custody. Because the trial court did not err in finding that defendant purposefully failed to notify plaintiff of the November hearing, its order denying defendant's request for a change of custody was not an improper sanction for his failure to provide notice, and the trial court did not abuse its discretion in rendering its custody decision, we affirm.

The custody order in this case governs twin boys born to the parties in July 2004. The original custody order granted primary physical custody to plaintiff, although the twins were apparently living with both parties at the time of the order. After the parties separated, defendant filed a motion seeking primary physical custody. The trial court held a hearing on the motion in November 2006, which plaintiff did not attend. After receiving defendant's testimony, the court granted the change in custody. Plaintiff thereafter filed a motion for reconsideration, advising the court that she had not received notice of the November hearing. After granting plaintiff's motion and rescinding the order changing custody, the court held a brief re-hearing in December 2006, and then ordered that primary physical custody remain with plaintiff. The court indicated that defendant had misled the court concerning the notice to plaintiff of the November hearing, and that defendant was the "barrier to effective communication between the parties given his temper and dishonesty."

On appeal, defendant first asserts that the trial court erred in finding that defendant purposefully failed to notify plaintiff of the November hearing. We disagree.

In child custody disputes, we must affirm the trial court's findings unless they are against the great weight of the evidence, or the trial court committed a palpable abuse of discretion or a clear legal error on a major issue. MCL 722.28. Here, there was evidence to support the trial court's finding.

The record contains the notice form that plaintiff received from defendant; the form contained an original signature in ink, but was blank as to the date and time of the hearing. There was some dispute at the December hearing as to whether the form was altered, but that dispute necessarily involved a credibility contest between plaintiff and defendant. Given the trial court's superior vantage point to assess the witnesses' candor, we defer to the trial court's credibility determinations. *Harper v Harper*, 199 Mich App 409, 414; 502 NW2d 731 (1993). Based on the form produced by plaintiff and on the trial court's credibility determinations, the evidence supports the trial court's finding.

Defendant next argues that the trial court's order denying defendant's request for a change of custody was an improper sanction for his failure to provide notice. Defendant presents no authority for his characterization of the order as a sanction. His failure to provide proper authority for his contention constitutes abandonment of the issue. *Thompson v Thompson*, 261 Mich App 353, 356; 683 NW2d 250 (2004). We also note that the trial court did not characterize its order as a sanction.

Defendant's next argument is that the trial court's findings were insufficient to support the court's decision on the merits. We disagree. We review the trial court's decision for an abuse of discretion. *Vodvarka v Grasmeyer*, 259 Mich App 499; 507-508; 675 NW2d 847 (2003); see also MCL 722.28.

Here, defendant gave testimony at a November 22, 2006 hearing concerning why custody of the children should be changed so that he would have sole physical custody. The trial court expressed concern that the plaintiff was not present, but addressed the twelve best interest factors (based essentially on defendant's testimony) and awarded primary physical custody of the children to defendant. The order for change of custody was thereafter rescinded and a re-hearing as to the matter of custody was held on December 20, 2006. Both parties attended this hearing and, after hearing brief testimony from plaintiff about her lack of notice of the first hearing, the trial court indicated it was adopting the conciliator's recommendation that primary physical custody of the children should remain with plaintiff and entered an order consistent with the same.

In the recommendation, the conciliator found that the children's best interests would be best served by continuing primary physical custody with plaintiff. The conciliator noted that the parties were equal on most of the best interest factors, but expressed concern about the defendant's long history of drug abuse (with a relapse in June of 2005). The conciliator also noted that defendant did not show that a change in primary physical custody would be in the children's best interests. In adopting the above rationale, the trial court implicitly addressed the children's best interests and found a lack of clear and convincing evidence that a change in custody was best for the children. Moreover, in addition to the conciliator apprising the court of facts regarding which custodial arrangement would be in the children's best interests, defendant presented his arguments and facts he felt were pertinent to a custody determination at the November hearing. The trial court clearly took all of the above into account in issuing its custody order, and we find no abuse of discretion in the trial court's finding that a change in custody would not be in the children's best interests.

Lastly, defendant asserts that the current judge cannot provide a fair and impartial ruling, and asks this Court to order that the case be assigned to a different judge on remand. Because we decline to remand this case, this issue need not be addressed.

Affirmed.

/s/ William B. Murphy
/s/ Michael J. Talbot
/s/ Deborah A. Servitto